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C.S. 100 C

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 3327 /2004

PETITIONER : K. Saji, S/o. Late G. Kunjappy, Aged about 40 years, Branch Secretary, Bhartiya Communist Party of India, Branch Kirandul, R/o. Old D/S. 352, P.O. Kirandul, District South Bastar, Dantewada (C.G.)

P.R.No. 3307/04
Presented by Shri S.C. Verma
dated 16-9-04

VERSUS

RESPONDENTS :
1) State of Chhattisgarh, Through Its Secretary, General Administration Department, Town & Country Planning, D.K.S. Bhawan Raipur.
2) The Collector, South Bastar Datewada (C.G.)
3) Sub Divisional Officer (Revenue) / Administrator Nagar Palika Parisad, Kirandul, District South Bastar, Dantewada. (C.G.)
4) Chief Municipal Officer, Kirandul, District South Bastar, Dantewada (C.G.)

F (12) 16.9.04

20/9/04

PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS, DIRECTIONS AND/OR ORDERS

(46)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 3929/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4-11-2004

On a mention being made, the case is taken up for hearing.

Shri S.C. Verma, counsel for the petitioner.

Shri N. K. Agrawal, Deputy Advocate General for the State/respondents 1 to 3.

Shri Sanjay K. Agrawal, counse for respondent No.4.

The petitioner has preferred this petition under Article 226/227 of the Constitution of India questioning the correctness and legality of the order dated 1st September 2004 (Annexure-P/1) passed by the Collector, whereby the Collector, Dantewada has reserved 3 seats/wards for SC, 4 seats/wards for ST and 5 seats/wards for OBC category in Kirandul Municipal Council for the ensuing 2004 Municipal Council Elections.

Learned counsel for the petitioner, while making his submissions, submitted that other points raised by the petitioner in paras 5.4 and 5.6 of the petition, he is not pressing for the same. He further submitted that Rule 4 of Madhya Pradesh Municipal Council (SC, ST, OBC and Women Reservation) Rule 1994 (hereinafter referred to as 'the Rules, 1994') envisages that in the subsequent elections same procedure for reservation will be applied which was applied for the first time under Rule3. Elaborating his arguments, he submitted that in the year 1999 elections 3 seats were reserved for OBC whereas, this time vide impugned order the Collector, Dantewada has reserved 5 seats for OBC. According to him, this is contrary to the spirit of the Rule 4, as in the prior elections 3 seats were reserved

XI-HC-22

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

for OBC, therefore, in view of Rule 4, the Collector, Dantewada ought to have reserved only 3 seats this time.

Whereas, learned Deputy Advocate General submitted that Rule 3 prescribes that according to the percentage of the population of SC/ST, seats will be reserved for them. According to sub-rule (2) of Rule 3 if the reservation of seats for SC/ST comes to 50% or less than 50%, in that case, 25% of the total seats are to be reserved for OBC.

Having heard learned counsel for the parties, if we look into sub-rule (2) of Rule-3, perusal of this rule shows that if the reserved seats for SC/ST are 50% or less than total seats, in that case as far as possible near 25% seats of the total seats will be reserved for OBC and for reservation of OBC seats, those seats are to be identified through a draw of lot out of the seats which are not reserved for SC/ST.

It is an admitted position that total number of seats of Kirandul Municipal Council are 18 and 25% of which comes to 4.50. As per sub-rule (4) of Rule 3 if half or more than half of the seat in addition to the other seats comes, then that will be counted as one. In the present case 25% of 18 seats comes to 4.50. As per sub-rule (4) half is to be counted as one, therefore total number of seats for OBC comes to 5.

By the impugned order the Collector, Dantewada has reserved 5 seats for OBC, therefore, in my opinion, there is no illegality, infirmity or incorrectness in the impugned order.

I do not find any substance in the arguments of the learned counsel for the petitioner that during last election only 3 seats were reserved for

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

OBC, therefore, for the election 2004 only 3 seats ought to have been reserved for OBC.

If the argument advanced by the learned counsel for the petitioner is accepted, then the same will be contrary to sub-rule(2) of Rule-3. Rule-4 prescribes only procedure. The same procedure to be adopted in the next election. It does not prescribe that the same percentage is to be kept or same number of seats are to be kept which were reserved in the previous election. If by mistake in the previous election 3 OBC seats were reserved instead of 5 seats that does not give right to anyone that misinterpretation should continue forever.

Therefore, in view of the above, I do not find any substance in this petition. The petition is liable to be dismissed and the same is dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

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[पीछे देखिये